

**Ordinance No. 2015-XX**

**An Ordinance amending and reenacting Article XIV-B, Tourist/Historic District, Section J., Architectural Review Board, of the Zoning Ordinance of the City of Hopewell**

**ARTICLE XIV-B.  
TOURIST/HISTORIC DISTRICT (TH-1)**

**STATEMENT OF INTENT**

The Tourist/Historic District is intended to create an attractive surrounding to tourist who are interested in the historic significance of the area and to reflect in a historic context the role of City Point as a commercial and residential town. Such a district would permit uses which otherwise may be deemed incompatible, but, due to the common ties to historic and architectural preservation and development, the uses coexist and work together to form a network of commercial and residential entities with a backdrop of historic significance. To the ends, development is limited to low density residential and commercial and light manufacturing (cottage industry) of historic or tourist oriented merchandise or products.

For clarification and better understanding of this article, the following are offered:

\* for the purpose of this article, "exterior architectural appearance: shall include architectural character; general arrangement of the exterior of a structure; general composition, including the kind, color, and texture of the building materials; and type and character of all windows, doors, light fixtures, signs and appurtenant elements subject to public view from a public street, public alley, or other public place.'

**A. USE REGULATIONS**

In the TH-1 Tourist/Historic District, land may be used and buildings or structures may be erected, altered or used, only for the following (with off-street parking as required for the permitted use within the district):

1. Uses by right:
  - a. Single family dwellings.
  - b. Public scenic parks and gardens.
  - c. Accessory uses as defined in this ordinance; however, no accessory use or structure shall be any closer than fifteen (15) feet to any property line.
  - d. Off-street parking as required in Article XVIII of this ordinance.
  - e. Signs reviewed by the Architectural Review Board (ARB) and deemed appropriate for historic intent in design, verbiage, and color, in accordance with Article XVIII (L) of this ordinance.

- f. Municipal and public service facilities as well as public utilities, such as poles, line distribution transformers, meters, water, sewer and gas lines, booster and relay stations, transformer substations, transmission lines, to be located underground in all instances; cellular towers to be excluded.
  - g. Private utilities; towers for wireless transmission above the frequency of 20,000 hertz with a Conditional Use Permit by City Council.
  - h. Municipal owned recreational facilities which enhance the historic nature of the district.
  - i. Home occupation, as defined, to be located in the main building or an appropriate historic out-building.
- 2. Uses by Conditional Use Permit by City Council by Special Exception by the Board of Zoning Appeals, after review and recommendation by I Review Board.
  - a. Dwelling units in non-commercial areas of any otherwise permitted use, provided that each dwelling unit has a minimum of six hundred (600) gross square feet.
  - b. Banks and financial institutions.
  - c. Bed and Breakfast establishments.
  - d. Museums and art galleries.
  - e. Professional offices, as defined.
  - f. Restaurants, excluding drive-in and fast food establishments.
  - g. Retail stores and businesses which sell, as their primary product, items which are historic in nature or carry a historic connotation or have a significant interest in the tourist trade in the area, including but not limited to stores and boutiques specializing in ladies', children's, and men's wear, accessories, gifts, books, toiletries, jewelry, film, and selected sundries to be located only along Water Street or the Maplewood Apartment.
  - h. Cruise piers and the like with facilities for fueling but not including major repair or construction facilities.
  - i. Cottage industries which manufacture products for retail sale on premises that are oriented toward the tourist market in this area; to be located only along Water Street or the Maplewood Apartments.

## **B. AREA REGULATIONS**

- 1. The minimum lot area for permitted uses in this district shall be twelve thousand (12,000) square feet.

## **C. LOT WIDTH**

- 1. The minimum lot width for permitted uses in this district shall be eighty (80) feet at the setback line.

#### **D. SETBACK REGULATIONS**

1. Structures shall be located at least twenty five (25) feet from any street or highway, or any street or highway right-of-way line, except that if there are two abutting lots with structures on both of them, no new structure need be set back more than the average of the two (2) adjacent structures on either side. This shall be known as the "setback line".

#### **E. YARD REGULATIONS**

1. Side: The minimum width of each side yard for a permitted use in this district shall be ten (10) feet.
2. Rear: Each main structure shall have a rear yard of at least twenty five (25) feet.

#### **F. HEIGHT REGULATIONS**

1. Buildings may be erected up to thirty-five (35) feet or two and one half (2 1/2) stories from grade, except that:
  - a. Dwellings may be increased in height up to forty-five (45) feet or three (3) stories provided the required side yards are increased one (1) foot for each additional foot of height over thirty-five (35) feet.
  - b. Chimneys, water towers, wireless towers and other necessary mechanical appurtenances when permitted by this Article are exempt from the provisions of this section.

#### **G. SPECIAL PROVISIONS FOR CORNER LOTS**

1. Of the two (2) sides of a corner lot, the front shall be deemed to be the shorter of the two (2) sides fronting on streets, except that when one street has more than twice the traffic volume of the other, the side facing the street with the highest traffic volumes shall be deemed to be the front.
2. The side yard facing on the side street shall be twenty (20) feet or more for both the main and accessory building.

#### **H. REQUIREMENT FOR PERMITTED USES**

Before a building permit shall be issued or construction commenced on any permitted use other than a single-family dwelling in this district, or a permit issued for a new use other than a single-family dwelling, all requirements of Article XVI, Site Plan Requirements, shall be met. All proposals for residential, commercial, professional use, new construction, restoration or alterations shall be reviewed for appropriateness by the Review Board before a building permit or business license shall be issued or construction commenced on any permitted use in this district.

## **I. CERTIFICATION OF APPROPRIATENESS, GENERALLY**

1. No building or structure within the Historic District shall be erected, reconstructed, altered or restored unless and until an application for a certificate of appropriateness shall have been approved by the Architectural Review Board.
2. No building or area which has been designated as a historical building or area by the Virginia Historic Landmarks Commissioner, or by the local, state or federal government shall be demolished or removed, in whole or in part, unless and until an application for a certificate of appropriateness shall have been approved by the Architectural Review Board.
3. Evidence of such required approval shall be a certificate of appropriateness issued by the Architectural Review Board.
4. Application for a certificate of appropriateness required by the Article shall be made to the zoning administrator.

## **J. ARCHTITECTURAL REVIEW BOARD**

1. An Architectural Review Board is hereby established and shall be known as the Architectural Review Board, hereafter referred to as the review board. The review board membership shall consist of no less than three (3) nor more than seven (7) members who shall be appointed by City Council. One (1) shall be a-resident of the City Point Historic District, one (1) may be a registered architect, and the remainder shall be residents of the City of Hopewell with knowledge and demonstrated interest in the historic character of the city. These members shall serve a term of four (4) years One (1) member of the city administration shall be appointed as an advisory member of the review board and shall have no vote. (Ord. 2009-21)
2. The review board shall elect from its own membership a chairman and a vice chairman and secretary, who shall serve annual terms as such and may succeed themselves.
3. The chairman shall conduct the meetings of the review board. The secretary shall keep minutes of the meetings and a permanent record of all resolutions, motions, transactions, and determinations. All members of the review board, except for advisory members, shall be entitled to vote, and the decisions of the review board shall be determined by a majority vote. A quorum shall be a majority of the membership. ~~of four (4)~~ A quorum voting members present is required before the review board may take any official action. The review board shall meet monthly after notification by the zoning administrator of an application for a certificate of appropriateness or permit requiring action by the review board. The meetings of the review board shall be open to the public, and a full and impartial hearing shall be granted. The review board shall vote and announce its decision on any matter properly before it no later than sixty (60) days after the conclusion of the hearing on the matter, unless the time is extended with the written consent of the applicant. The review

board cases where an applicant appears within ninety (90) days with his application amended as provided in this Article. The review board shall not hear the subject matter of any application, which has been denied, for a period of one (1) year, except in cases where an applicant appears within ninety (90) days with the application amended as hereinafter provided. (Ord. 2011-14)

4. In the case of disapproval or denial of the erection, reconstruction, alteration, or restoration of a building or structure, the review board shall briefly state its reasons for such disapproval in writing, and it may make recommendations to the applicant with respect to suggested changes, the appropriateness of design, arrangement, texture, material, color, location and the like of a building or structure involved. In the case of disapproval accompanied by such recommendations, the applicant may amend and resubmit his application within ninety (90) days of such disapproval or denial if such application has been amended to comply with all of the recommendations of the review board.
5. In the case of disapproval of the demolition of a building which exists in the Historic District, the review shall state specifically its reason in writing.
6. The review board, when requested by application for a building permit in the Historic District, shall advise as to the changes and alterations necessary to bring the proposed building or structure in harmony with the general design of the building or structures located in the surrounding areas.
7. In matters governing the procedure for meetings not covered by this Article, the review board may establish its own rules and procedures; provided they are not contrary to the spirit of this Article.

#### **K. NOTICE OF PUBLIC HEARING:**

No application for a certificate of appropriateness to demolish a building which exists in the Historic District shall be considered by the review board until a public hearing has been held thereon, following notice as required under Section 15.2-2204, Code of Virginia (1950), as amended.

#### **L. CRITERIA FOR GRANTING A CERTIFICATE OF APPROPRIATENESS:**

1. Before a certificate of appropriateness is issued for the erection, reconstruction, alteration or restoration of a building or structure in the Historic District, the review board shall consider:
  - a. The historical or architectural value and significance of the building or structure and its relationship to or congruity with the historic value of the land, place and area in the district upon which it is proposed to be located, constructed, reconstructed, altered, or restored.
  - b. The appropriateness of the exterior architectural features of such building or structure to such land, place or area and its relationship to or congruity with the exterior architectural features of other land, places, areas, buildings or structures in the district and environs.

2. Before a certificate of appropriateness is issued for the demolition of a building or structure which exists in the Historic District, the review board shall consider:
  - a. Is the building of such architectural or historic interest that its removal or disturbance would be to the detriment of the public interest?
  - b. Is the building of such interest or significance that it could be made into a national, state or local historic shrine?
  - c. Is the building of such old and unusual or uncommon design, texture and/or material that it could not be reproduced, or could be reproduced only with great difficulty and/or expense?
  - d. Would retention of the building help preserve the historic character of the district?
  - e. Would retention of the building help preserve a historic interest in a place or an area of the city?
  - f. Would retention of the building promote the general welfare by maintaining and increasing real estate values; generating business; creating new positions; attracting tourists, students, writers, historians, artists and artisans; attracting new residents; encouraging study and interest in American history; stimulating interest and study in architecture and design; educating citizens in American culture and heritage; and making the city a more attractive and desirable place in which to live?
3. The review board shall not consider detailed designs, interior arrangements, or features of a building or structure which are not subject to public view from a public street, public way, or other public place, except to the extent necessary to do so for the purpose of preventing the location, construction, reconstruction, alteration or repair of a building or structure that will be incongruous with the preservation and protection of the historic aspects, settings and environment of the district and other buildings, structures, land, places of areas therein.

#### **M. ISSUANCE OF CERTIFICATE OF APPROPRIATENESS:**

Upon approval by the review board of any erection, reconstruction, alteration, restoration or demolition, a certificate of appropriateness, signed by the Zoning Administrator or his/her designee and bearing the date of issuance, but subject to the provisions of this Article shall be made available to the applicant.

#### **N. EXPIRATION OF CERTIFICATE OF APPROPRIATENESS:**

Any certificate of appropriateness issued pursuant to this Article shall expire of its own limitations twelve (12) months from the date of issuance if the work authorized by said certificate has not commenced or ; if any such work is suspended or abandoned for a period of twelve (12) months after being commenced. Any certificate of appropriateness issued pursuant to this Article shall also expire if the work authorized by said certificate has not been substantially completed within eighteen (18) months after issuance of the certificate.

"Substantial Completion" is the point at which, as certified in writing by the contracting parties,

a project is at the level of completion, in strict compliance with the contract, where:

- 1) Necessary final approval by the Hopewell Building Official has been given (if required); and
- 2) The owner has received all required warranties, paperwork and/or documentation from the contractor, if applicable; and
- 3) The owner may enjoy beneficial use or occupancy and may use, operate, and maintain the project in all respects, for its intended purpose; and
- 4) Any work remaining on the project is minor or “punch list” in nature.

Any period or periods of time during which the right to use any such certificate is stayed pursuant to this Article, shall be excluded from the computation of the twelve (12) or eighteen (18) month period.

#### **O. APPEALS FROM ARCHITECTURAL REVIEW BOARD:**

Any applicant aggrieved by a final decision of the Architectural Review Board shall have the right to appeal such decision to the Hopewell City Council, provided that such appeal is filed within a period of thirty (30) days after the review board has made its decision. The filing of the petition shall stay the review board’s decision pending the outcome of the appeal to the City Council. Any applicant aggrieved from any final decision of the City Council shall have the right to appeal to the circuit court for review by filing a petition at law, setting forth the alleged illegality of the action of the governing body, provided such petition is filed within thirty (30) days after the final decision is rendered by the governing body. The filing of the said petition shall stay the decision of the governing body pending the outcome of the appeal to the court, except that the filing of such petition shall not stay the decision of the governing body if such decision denies the right to raze or demolish a historic landmark, building or structure. The court may reverse or modify the decision of the governing body, in whole or in part, if it finds upon review that the decision of the governing body is contrary to law or that its decision is arbitrary and constitutes an abuse of discretion, or it may affirm the decision of the governing body.

#### **P. VIOLATIONS**

1. Violators of the Tourist/Historic District section of the Zoning Ordinance are subject to Article XX. Violations and Penalties.
2. Policy established by the Architectural Review Board does differentiate between a minor and a major violation.

- a. A minor violation means any action without the approval of the Board which would temporarily alter a structure whose effect could be reversed at a later date such as painting, fencing, re-roofing, etc. Minor violations will be dealt with by sending the violating party a notice of violation which would include information on the tourist/historic district and the Architectural Review Board. Repeated minor violations (i.e. more than two separate instances in less than five years) will be treated as a major violation.
- b. Major violation means any act taken without approval from the Board which would irreparably or permanently alter a structure or area, such as demolishing a structure, building a new structure or an addition to an existing structure, etc. Major violations will be dealt with in accordance with the provisions of the Zoning Ordinance and include the stoppage of work orders.

**Q. ADDITIONAL OR CONCURRENT RIGHT TO DEMOLISH BUILDINGS IN THE HISTORIC HOPEWELL DISTRICT:**

In addition to the right of appeal hereinabove set forth, the owner of a building or structure, the demolition of which is subject to the provisions of this Article, shall as a matter of right, be entitled to demolish such building or structure provided that:

1. He has applied to the board of review for such right.
2. That the owner has, for the period of time set forth in the time schedule hereinafter contained and a price reasonably related to its fair market value, made a bona fide offer to sell such building or structure and the land pertaining thereto to any person, government or agency thereof or political subdivision or agency thereof which gives reasonable assurance that it is willing to preserve and restore the building or structure and the land pertaining thereto.
3. That no bona fide contract, binding upon all parties thereto, shall have been executed for the sale of any such building or structure and the land pertaining thereto prior to the expiration of the applicable time period set forth in the time schedule hereinafter contained. Any appeal which may be taken to the court from the decision of the review board, whether instituted by the owner or by any other proper party, notwithstanding the provisions heretofore stated regarding a stay of the decision appealed from, shall not affect the right of the owner to make a bona fide offer to sell referred to in this paragraph. No offer to sell shall begin more than one (1) year after the final decision of the review board. The time schedule for offers to sell shall be as follows:

<b>Property Valued At:</b>	<b>Minimum Offer to Sell Period:</b>
Less Than \$25,000	3 months
\$25,000 – \$39,999	4 months
\$40,000 – \$54,999	5 months
\$55,000 – \$74,999	6 months



\$75,000 – \$89,999

7 months

\$90,000 – or more

12 months

#### **R. BONA FIDE OFFER TO SELL:**

1. Notice: Before making a bona fide offer to sell, provided for above in this Article, an owner shall first file a statement with the zoning administrator. The statement shall identify the property, state the offering price, the date of the offer of sale is to begin, and the name of the real estate agent, if any. No time period set forth in the schedule contained elsewhere in Section J. of the Article shall begin to run until the statement has been filed. Within five (5) days of receipt of a statement, copies of the statement shall be delivered to the members of city council, members of the planning commission, and the city manager.
2. Question as to price: The fact that an offer to sell a building or structure and the land pertaining thereto is at a price reasonably related to fair market value may be questioned; provided, it is filed with the zoning administrator, on or before fifteen (15) days after the offer for sale has begun, a petition in writing signed by at least twenty-five (25) persons owning real estate within the Historic Hopewell District. Upon receipt of such a petition, three (3) disinterested real estate appraisers, familiar with property values in the Historic Hopewell District, shall be appointed: one (1) by the review board, one (1) by the property owner and one (1) by the review board and the property owner. The cost of the appraisals shall be divided equally between the property owner and the city. Said appraisers shall forthwith make a appraisal of the building or structure and the land pertaining thereto in question and forthwith file a written report with the zoning administrator stating whether, in their opinion, the offer to sell the building or structure and the land pertaining thereto is at a price reasonably related to its fair market offer to sell the building or structure and the land pertaining thereto is at a price reasonably relate o its fair market value, the owner may continue as if no question had been raised. In the event the opinion is to the effect that the offer to sell the building or structure and the land pertaining thereto is not at a price reasonably related to its fair market value, the offer to sell shall be void an of no force and effect; and the owner, if he wishes to take advantage of the additional or concurrent right (to demolish said building or structure) provided for above in this Article, must file a notice provided for above and proceed with the demolition. Notwithstanding an adverse opinion by the appraisers, if any owner has entered into a binding bona fide contract as provided for above prior to the date the appraisers have file their report with the zoning administrator, the price shall be deemed reasonably related to fair market value.

#### **S. YARD VARIANCES:**

Due to peculiar conditions of design and construction in historic neighborhoods where buildings and structures are often built close to the lot lines, it is in the public interest to retain a neighborhood's historic appearance by granting variance to normal yard requirements. Where it s deemed that such a variance will not adversely affect neighboring properties, the board of review may recommend to the board of zoning appeals that such variance to standard yard requirements be made.

#### **T. PERMITTED USES:**

Nothing in this Article shall be construed to prevent any use of land, building, or structure in the district permitted by the regulations prescribed in this ordinance for the district in which such land, buildings, or structure is otherwise located.

#### **U. EXCLUSION:**

1. Nothing in this Article shall be construed to prevent the ordinary maintenance or repair of any exterior elements of any building or structure described in this Article; nor shall anything in this Article be construed to prevent the construction, reconstruction, alteration, or demolition of any such element which the authorized municipal officers shall certify as required by public safety.
2. For the purpose of this ordinance; ordinary maintenance and repair is defined as any work which preserves and does not alter the present or current appearance of the exterior elements of the building or structure.
3. For the purpose of this section, examples of work not requiring approval of the ~~Board of~~ Architectural Review Board are: repainting an existing window, door, porch, porch rail, etc.; re-roofing a building with the same type/color of shingles; replacing same color asbestos shingles on a house now containing asbestos shingles.
4. For the purpose of this section, examples of work requiring approval of the ~~Board of~~ Architectural Review Board are: changing the color of a house or structure; any new addition to a house or structure; any new house or structure; installing new windows or architectural trim; installing siding material not identical in color or texture to what is presently on the house or structure.

#### **V. DEFINING HISTORIC BUILDINGS AND AREAS:**

It shall be the continuing duty of the review board to investigate and delineate buildings, structures, places, and areas in the city having historic interest or value which should be preserved and protected in the execution and attainment of the purposes and objectives declared in this Article, and to report thereon from time to time to the city council for consideration as to whether they or any of them shall be set apart for preservation and protection under the provisions of this Article.

#### **W. HISTORIC MARKERS:**

The review board shall design an appropriate marker, bearing the seal of the city and the words "historic building" and shall invite each owner of a building of historical significance to display the marker thereon.

#### **X. PROTECTIVE MAINTENANCE:**

1. All buildings and structures within the Historic District shall be preserved against decay and deterioration and maintained free from structural defects to the extent that such decay, deterioration or defects may, in the opinion of the review board, result in the irreparable deterioration of any exterior appurtenance or architectural features or produce a detrimental effect upon the character of the district as a whole or upon the life and character of the structure itself. The existence of any of the following conditions shall be sufficient to deem a structure an “endangered structure”:
  - a. The deterioration or ineffective waterproofing of exterior walls or other vertical supports, including broken windows and doors;
  - b. The deterioration of roofs or horizontal members;
  - c. The deterioration of exterior chimneys;
  - d. The deterioration or crumbling of exterior plaster or mortar;
  - e. The deterioration of any feature so as to create or permit the creation of any hazardous or unsafe condition or conditions;
  - f. Defective lack of weather protection for exterior wall coverings, including lack of paint, or weathering due to lack of paint or other protective covering.
2. Upon a determination by the review board (with the technical advice of the Building Code Official) that a structure constitutes an endangered structure in accordance with section, the review board shall notify the zoning administrator of such determination, and the zoning administrator shall give notice of the determination and the requirements of this section to the property owner as set forth herein. Within thirty (30) days of receipt of this notice, the owner shall commence the necessary stabilization repairs and the owner shall complete the repairs within one hundred-twenty (120) days of such notice. The zoning administrator shall notify the owner by Certified Mail, Return Receipt Requested, of the endangered structure determination, and of the thirty (30) and one hundred-twenty (120) day time limitation set forth herein. Upon written notice to the zoning administrator within ten (10) days of receipt of the notice, an owner shall have a right to a hearing before the review board. Upon receipt of the owner’s notice, the zoning administrator shall promptly advise the owner of the time and location of the hearing and the right to present evidence and be represented by counsel. The hearing shall be informal and the decision of the review board shall be subject to the appeal in accordance with Section O of this Article. (Ord. 94-40)
3. The one hundred-twenty (120) day time limit for completion of the repairs as set forth in the preceding paragraph may be extended for thirty (30) day intervals on the discretion of the review board for good cause shown.
4. Enforcement of this section shall be in conformance with Article XXII (A) of this ordinance.
5. Violations of this section shall be punishable as set forth in Article XX (B) of this ordinance.

**ORDINANCE 2015-XX**  
**An Ordinance amending and reenacting Article IX-M, Downtown Design Review**

**Committee, Section M., Downtown Design Review Committee, of the Zoning Ordinance of  
the City of Hopewell**

**ARTICLE IX  
DOWNTOWN CENTRAL BUSINESS DISTRICT (B-1)**

**STATEMENT OF INTENT**

The district is intended to provide for an urban mix of retail, office, service, hotel, residential and civic functions for the city's historic downtown business core. The location of the district requires that uses be compatible with nearby residential housing and with the area generally. The district is intended to be a predominantly pedestrian area with shops and storefronts close to the road, pedestrian in scale, and having street trees and limited off-street parking. The history of the area will be retained with the preservation of historic structures and the replication of historic styles in additions and expansions. The core of the downtown district should exude the vitality of the interaction of people and activities.

This district is intended for the conduct of business to which the public requires direct and frequent access, but which is not characterized either by constant heavy truck traffic, other than stocking and delivery of light retail goods, or by any other nuisance factors other than those occasioned by incidental light and noise from the congregation of people, passenger vehicles, business offices, newspaper offices and restaurants.

**A. USE REGULATIONS**

Structures to be erected and land to be used shall be only for the following uses:

1. Accounting Services.
2. Advertising and Public Relations Agencies.
3. Antiques.
4. Apartments on the first floor of mixed-use buildings with a Conditional Use Permit.
5. Apartments on second and subsequent floors of commercial and office buildings/uses provided that each unit contain a minimum of nine hundred (900) gross square feet.
6. Apartments on second and subsequent floors of commercial and office buildings/uses containing average square footage below nine hundred (900) gross square feet, with a Conditional Use Permit.
7. Appliance Stores.
8. Architectural and Engineering Services.
9. Art Galleries, Framing and Supplies.
10. Bakeries.
11. Barber and Beauty Shops.
12. Bed and Breakfast Establishments.
13. Bookstores, except Adult bookstores.
14. Camera and Photo Supply Stores.
15. Casual and Formal Apparel Stores.
16. Child Care Services.
17. Churches.
18. Coffee Shops.
19. Commercial Banks and Financial Institutions, not to include check cashing establishments.
20. Computer Sales and Service.
21. Convenience Store.

22. Credit Unions.
23. Dance Studios.
24. Delicatessen.
25. Dry Cleaners.
26. Florist.
27. Gift, Stationary, and Card Shops.
28. Grocery Store.
29. Home Decorating Center and Interior Design Services.
30. Home Health Care Services.
31. Hotels.
32. Individual and Family Consulting Services.
33. Insurance Agencies.
34. Jewelry Stores.
35. Law Offices.
36. Marinas, Public or Private.
37. Medical and Dental Offices.
38. Motion pictures theaters, excluding drive-in theaters
39. Multi-family dwellings, with Conditional Use Permit.
40. Municipal and Government Agencies and Offices.
41. Municipal and Private Utilities.
42. Museums.
43. Music Stores.
43. Offices, including business, professional and administrative.
44. Off-street parking is not required in this district.
45. Parking Decks and Garages, Public.
46. Performing Arts Center.
47. Pet Shops.
48. Pharmacy.
49. Philanthropic and charitable institutions.
50. Photographic Studios.
51. Post Office
52. Print Shops.
53. Public Libraries.
54. Public Open Spaces and Uses owned and operated by a governmental agency.
55. Real Estate Agencies.
56. Recreation and Fitness Centers.
57. Research, development and laboratory facilities related to medical, biotechnology, life sciences and other product applications.
58. Restaurants
59. Security brokers and dealers.
60. Sporting goods.
61. Tailor Shops.
62. Tanning Salons.
63. Tax preparation services.
64. Title Abstract and Insurance Offices.
65. Townhouses, with Conditional Use Permit..

66. Toys, Games, and Crafts.
67. Upholstery shops.
68. Video Rental Stores, not to include adult video establishments.

**B. AREA REGULATIONS:**

1. Multi-family uses - For permitted multi-family and second story apartment unit uses, other than assisted housing for the elderly and physically handicapped, there shall be a minimum lot area of one thousand (1,000) square feet per dwelling unit.
2. Group housing for the elderly and handicapped - For group housing for the elderly and handicapped, there shall be a minimum lot area of one thousand (1,000) square feet per dwelling unit.
3. Business uses - None.

**C. LOT WIDTH REGULATIONS:**

None.

**D. SETBACK REGULATIONS:**

None.

**E. YARD REGULATIONS:**

1. Side: None, except when a use is abutting a residential district, then there shall be a minimum side yard of five (5) feet.
2. Rear: None, except when a use is abutting a residential district, there shall be a minimum rear yard of twenty (20) feet.

**F. HEIGHT REGULATIONS:**

Buildings may be erected up to one hundred twenty five (125) feet from grade, except that church spires, belfries, cupolas, chimneys, flues, flag poles, television antenna, radio aerials, and equipment penthouses are exempt from the provisions of this section.

**G. REQUIREMENTS FOR PERMITTED USES:**

Before a building permit shall be issued or construction commenced on any permitted use in the district or a permit issued for a new use, all requirements of Article XVI, Site Plan Requirements, shall be met.

**H. ARCHITECTURAL TREATMENT – REHABILITATION:**

- a. The rehabilitation of any existing structure within the National Register Historic Downtown District shall comply with the Secretary of Interior's Standards for Rehabilitation, except to the extent specific deviations from such standards are expressly approved by the Downtown Design Review Committee (the "Review Committee") established under Article IX, M hereafter.
- b. The rehabilitation of any existing structure within the district that is not located within the National Register Historic Downtown District shall comply with Section I below.

**I. ARCHITECTURAL TREATMENT – NEW CONSTRUCTION/DEVELOPMENT GUIDELINES:**

The following guidelines shall be considered by the Review Committee in approving or denying any application for a Certificate of Appropriateness or a building permit in addition to the criteria set forth in Article IX, O hereafter and the guidelines set forth in the Downtown Master Plan adopted by City Council on January 14, 2003.

1. New development shall be compatible with the pedestrian scale and historic character of

the Downtown. New or altered buildings should be generally consistent in height, scale, massing (shape) and materials with existing structures in the Downtown. The intent of this is to insure functional and visual compatibility, not to specifically encourage imitation of past architectural styles. Nothing herein shall preclude the use of imitation or artificial materials or elements, so long as such materials and elements are similar in appearance, style, detail and design to the materials found within the downtown and consistent with the guidelines and criteria contained herein and in the Downtown Master Plan.

2. No building exterior (whether front, side or rear) shall consist of architectural materials inferior in quality, appearance or detail to any other exterior of the same building. Nothing in this section shall preclude the use of different materials on different exteriors if representative of good architectural design but shall preclude the use of inferior materials on sides that face adjoining property. No portion of a building constructed of cinder block, vinyl siding, or corrugated and/or sheet metal shall be permitted; provided, however, that cinder block that is covered by an acceptable façade so that the block is not visible, shall be permitted.
3. Buildings shall be designed to impart harmonious proportions and to avoid monotonous facades or large bulky masses. Buildings shall possess architectural variety, but shall be compatible with existing structures, especially nearby structures of high historic interest. New or remodeled buildings shall enhance an overall cohesive downtown character as reflected in existing structures. This character shall be achieved through the use of design elements, including, but not limited to, materials, articulation of doors and windows, sculptural or textural relief of facades, architectural ornamentation, varied roof lines or other appurtenances such as lighting fixtures and/or planting as described in these guidelines and the Downtown Master Plan.
4. Architectural treatment of all buildings shall be compatible with buildings located within the same block or directly across any road, as determined by the Review Committee. At locations where the existing buildings do not conform, the Review Committee may approve a new architectural treatment or theme. Compatibility may be achieved through the use of similar building massing, materials, scale, colors or other architectural features.

#### J. SIGNAGE:

##### 1. Sign Placement.

- a. Signs shall be placed so that they do not obstruct architectural elements and details that define the design of the building, and the signage of adjacent businesses.
- b. Flat wall signs shall be located either above the storefront, within the frieze of the cornice, on covered transoms, or on the pier that frames display windows or generally on flat, unadorned surfaces of the façade or in other areas clearly suitable as sign locations.
- c. Projecting signs shall be located at least ten (10) feet above the sidewalk, project no more than three (3) feet from the façade of the building, and shall not be placed above the cornice line of the first floor level unless there is a clearance of less than ten (10) feet below such cornice line to the sidewalk.
- d. Window signs, both interior and exterior, shall be located approximately five and one-half (5 ½) feet above the sidewalk at the center point of the window and the window sign for good pedestrian visibility, except that such signs may be located eighteen (18) inches from the top or bottom of the display window glass.
- e. Window signs may be placed on the glazing of doors and on upper floor windows for

- separate building tenants.
- f. Awning and canopy signs shall be placed on the valance area only. The minimum space between the edge of the letter and the top and the bottom of the valance shall be one and one-half (1 ½) inches. The average height of lettering and symbols shall be no more than nine (9) inches.
  - g. Freestanding signs shall not be permitted in this district.
  - h. Roof signs shall not be permitted in this district.
2. Sign Size.
- a. All combined building signage shall not exceed fifty (50) square feet.
  - b. Flat wall signs shall not exceed eighteen (18) inches in height and shall not extend more than six (6) inches from the building façade.
  - c. Projecting signs shall be a maximum of six (6) square feet per sign face.
  - d. The average height of letters and symbols shall be no more than twelve (12) inches on wall signs, nine (9) inches on awning and canopy signs, and six (6) inches on window signs.
  - e. Window signs shall not obscure more than twenty percent (20%) of the window glass.
3. Quantity of Permanent Signs.
- The number of signs permitted for any building shall be limited as follows to encourage compatibility with the building and discourage visual clutter.
- a. Signs shall be limited to two (2) total per building and each shall be of a different type. No building shall have more than one (1) wall sign on any street frontage.
  - b. Small directory signs may be located near entries or inside a common lobby area.
4. Sign Design and Shape.
- a. All signs shall be readable and convey an image for the business and historic downtown area that is compatible with, and appropriate under, the Downtown Master Plan.
  - b. Signs shall conform to the shape of the area where the sign is to be located, except when a sign is to take on the shape of a product or a service, such as a coffee mug for a coffee shop or a shoe for a shoe store. Such shapes shall not obscure the architectural elements of the building.
5. Materials.
- a. Signs shall be made only of traditional sign materials such as wood, glass, gold leaf, raised individual metal or painted wood letters, or painted letters on wood, metal, or glass.
  - b. Form letters shall not be permitted.
  - c. Wall signs shall not be painted directly on the surface of masonry walls if the wall has not been previously painted.
  - d. Window signs shall be painted or have flat decal letters and shall not be three-dimensional (3-D).
  - e. Non-professionally painted signs shall not be permitted.
6. Color.
- Colors that complement the materials and color scheme of the building, including the accent and trim colors, shall be used. Three (3) colors are recommended, although additional colors may be used where complementary to the color scheme of the building. Use of colors in excess of three shall be subject to the approval of the Review Committee.
7. Illumination.



Signs shall be indirectly lit with a shielded incandescent light source. Internally lit plastic molded signs shall not be permitted in the district.

8. Buildings with Multiple Tenants.

A master sign plan shall be submitted for any building having more than one tenant. Upper-floor tenants shall be identified at each primary entrance by a flat, wall-mounted directory sign.

9. Other Signs.

Wall murals shall be compatible with the district character and subject to approval of the Review Committee.

K. AWNINGS AND CANOPIES:

1. Types.

a. Standard Slope Fabric Awnings may be used on most historic buildings and may be either fixed or retractable.

b. Boxed or Curved Fabric Awnings may be used on non-historical buildings.

2. Design and Placement.

a. Awnings shall be placed within the storefront, porch, door or window openings so as to not obscure architectural elements of the building or damage the building façade.

b. Awning designs shall not conflict or interfere with existing signs, distinctive architectural features of the building, street trees or other streetscape features.

c. Awnings shall be shaped to fit the opening in which they are installed.

d. The bottom of any awning shall be a minimum of seven (7) feet above the sidewalk.

e. Plastic or Aluminum Awnings shall not be permitted in the district.

f. The color scheme of the awning shall coordinate with the overall colors of the building. Solid colors, wide and narrow stripes may be used if compatible with building colors.

L. CERTIFICATION OF APPROPRIATENESS, GENERALLY:

1. No building or structure within the district shall be erected, reconstructed, altered, improved or restored unless and until an application for a Certificate of Appropriateness shall have been approved by the Review Committee.

2. No building or area which has been designated as a historical building or area by the Virginia Historic Landmarks Commissioner, or by the Local, State or Federal government shall be demolished or removed, in whole or in part, unless and until an application for a Certificate of Appropriateness shall have been approved by the Review Committee.

3. Evidence of such required approval shall be a Certificate of Appropriateness issued by the Review Committee.

4. Application for a Certificate of Appropriateness required by the Article shall be made to the Director of Development or his designee.

M. DOWNTOWN DESIGN REVIEW COMMITTEE:

1. A review committee is hereby established and shall be known as the Downtown Design Review Committee, hereafter referred to as the "Review Committee." The membership of the Review Committee shall consist of no less than three (3) nor more than five (5) voting members who shall be appointed by City Council to serve staggered terms. ~~All members shall reside in the City of Hopewell, and~~ At least one (1) member shall be a downtown property owner, ~~one (1) another member~~ shall be a downtown business owner, and the remaining ~~three (3) four~~ member or members shall have knowledge of, and demonstrated interest in, the historic character of the City, and knowledge or expertise deemed useful to the work of the Review Committee. These members may include, but not limited to, a

licensed contractor, a real estate broker, or architect. City Council, at its own discretion, may appoint members that do not reside in the City of Hopewell if they deem it appropriate. The members shall serve a term of four (4) years. ~~each except that the original appointments shall be made as follows: one (1) member shall be appointed for a one (1) year term; two (2) members shall be appointed for a two (2) year term; and two (2) members shall be appointed to four (4) year terms.~~ The City Planner shall serve as an advisory member of the Review Committee and shall have no vote. No member of the Review Committee shall serve more than two consecutive four (4) year terms. A member may be re-appointed to additional terms after being out of office for at least one four (4) year term.

2. The Review Committee shall elect from its own membership a chairman and a vice chairman who shall serve annual terms as such and may succeed themselves.
3. The chairman shall conduct the meetings of the Review Committee. All members of the Review Committee, except for advisory members, shall be entitled to vote, and the decisions of the Review Committee shall be determined by a majority vote. A quorum ~~of~~ shall be a majority of the membership. A quorum shall be three (3) voting members ~~shall be required to be present for official business to be conducted at any meeting and for any action to be taken.~~ The Review Committee shall meet monthly after notification by the Director of Development of an application for a Certificate of Appropriateness or permit requiring action by the Review Committee. The Review Committee shall take action on any matter properly before it no later than sixty (60) days after its first meeting to discuss such matter, unless the time is extended with the written consent of the applicant. The Review Committee shall not reconsider any decision made by it, or entertain any application or request that it deems to be substantially similar to an application or request that has previously been denied, for a period of one (1) year from the date of denial, except in cases where an applicant resubmits his application amended as provided in this Article within ninety (90) days after the date of denial of the initial application.
4. In the case of disapproval or denial of the erection, reconstruction, alteration, or restoration of a building or structure, the Review Committee shall briefly state its reasons for such disapproval in writing, and it may make recommendations to the applicant with respect to suggested changes, the appropriateness of design, arrangement, texture, material, color, location and the like of a building or structure involved. In the case of disapproval accompanied by such recommendations, the applicant may amend and resubmit his application within ninety (90) days of such disapproval or denial if such application has been amended to comply with all of the recommendations of the Review Committee.
5. In the case of disapproval or denial of an application for the demolition of a building in the district, the Review Committee shall state specifically its reasons for such disapproval or denial in writing.
6. The Review Committee, when requested for a building permit in the district, shall inform the applicant of any changes and alterations necessary to bring the proposed building or structure in harmony with the general design of the building or structures located in the surrounding areas as a condition of issuing such permit.
7. In matters governing the procedure for meetings not covered by this Article, the Review Committee may establish its own rules and procedures; provided they are not contrary to the content and intent of this Article.

#### N. NOTICE OF PUBLIC HEARING:

No application for a Certificate of Appropriateness to demolish a building that exists in the district shall be considered by the Review Committee until a public hearing has been held thereon, following notice as required under Section 15.2-2204, Code of Virginia (1950), as amended.

#### O. CRITERIA FOR GRANTING A CERTIFICATE OF APPROPRIATENESS:

1. Before a Certificate of Appropriateness is issued for the erection, reconstruction, alteration or restoration of a building or structure in the district, the Review Committee shall consider:
  - a. The historical or architectural value and significance of the building or structure and its relationship to or congruity with the historic value of the land, place and area in the district upon which it is proposed to be located, constructed, reconstructed, altered, or restored.
  - b. The appropriateness of the exterior architectural features of such building or structure to such land, place or area and its relationship to or congruity with the exterior architectural features of other land, places, areas, buildings or structures in the district and environs.
2. Before a Certificate of Appropriateness is issued for the demolition of a building or structure which exists in the district, the Review Committee shall consider:
  - a. Is the building of such architectural or historic interest that its removal or disturbance would be to the detriment of the public interest?
  - b. Is the building of such interest or significance that it could be made into a national, state or local historic landmark?
  - c. Is the building of such old and unusual or uncommon design, texture and/or material that it could not be reproduced, or could be reproduced only with great difficulty and/or expense?
  - d. Would retention of the building help preserve the historic character of the district?
  - e. Would retention of the building help preserve a historic interest in a place or an area of the city?
  - f. Would retention of the building promote the general welfare by maintaining and increasing real estate values; generating business; creating new positions; attracting tourists, students, writers, historians, artists and artisans; attracting new residents; encouraging study and interest in American history; stimulating interest and study in architecture and design; educating citizens in American culture and heritage; and making the city a more attractive and desirable place in which to live?
3. The Review Committee shall not consider detailed designs, interior arrangements, or features of a building or structure which are not subject to public view from a public street, public way, or other public place, except to the extent necessary to do so for the purpose of preventing the location, construction, reconstruction, alteration or repair of a building or structure that will be incongruous with the preservation and protection of the historic aspects, settings and environment of the district and other buildings, structures, land, places or areas therein.

#### P. ISSUANCE OF CERTIFICATE OF APPROPRIATENESS:

Upon approval by the Review Committee of any erection, reconstruction, alteration, restoration or demolition, a Certificate of Appropriateness, signed by the committee chairman and bearing the date of issuance, but subject to the provisions of this Article shall be made available to the applicant.

**Q. EXPIRATION OF CERTIFICATE OF APPROPRIATENESS:**

Any Certificate of Appropriateness issued pursuant to this Article shall expire twelve (12) months from the date of issuance if the work authorized by said certificate has not commenced, or if any such work is suspended or abandoned for a period of twelve (12) months after being commenced. Any period or periods of time during which the right to use any such certificate is stayed pursuant to this Article or by a court of competent jurisdiction, shall be excluded from the computation of the twelve (12) month period.

**R. APPEALS FROM DOWNTOWN DESIGN REVIEW COMMITTEE:**

Any applicant aggrieved by a final decision of the Review Committee shall have the right to appeal such decision to the Hopewell City Council, provided that such appeal is filed within a period of thirty (30) days after the Review Committee has made its decision. The filing of the petition shall stay the Review Committee's decision pending the outcome of the appeal to the City Council. Any applicant aggrieved from any final decision of the City Council shall have the right to appeal to the circuit court for review by filing a complaint, setting forth the alleged illegality of the action of the governing body, provided such complaint is filed within thirty (30) days after the final decision is rendered by the governing body. The filing of the said complaint shall stay the decision of the governing body pending the outcome of the appeal to the court except that the filing of such complaint shall not stay the decision of the governing body if such decision denies the right to raze or demolish a historic landmark, building or structure. The court may reverse or modify the decision of the governing body, in whole or in part, if it finds upon review that the decision of the governing body is contrary to law or that its decision is arbitrary and constitutes an abuse of discretion. The filing of an appeal hereunder shall not operate as a de facto approval of any application disapproved or denied by the Review Committee.

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## **ORDINANCE 2015-XX**

### **An Ordinance amending and reenacting Article XIX, Provisions for Appeals, Section A., Board of Zoning Appeals and Section C., Rules and Regulations, of the Zoning Ordinance of the City of Hopewell,**

#### **ARTICLE XIX.**

#### **PROVISIONS FOR APPEAL**

##### **A. BOARD OF ZONING APPEALS**

1. A board consisting of five (5) or seven (7) residents shall be appointed by the circuit court for the City of Hopewell, Virginia. Members of the board shall hold no other public office in the City except that one may be a member of the Planning Commission. The board shall serve without pay other than for traveling expenses, and members shall be removable for cause upon written charges and after public hearing. Appointments for vacancies occurring otherwise than by expiration of term shall in all cases be for the unexpired term.
2. The term of office shall be for five (5) years, except that the original appointments shall be made for such terms that the term of at least one (1) member shall expire each year.
3. Members may be removed for cause by the appointing authority upon written charges and after a public hearing.
4. Any member of the board shall be disqualified to act upon a matter before the board with respect to property in which the member has an interest.
5. The board shall choose annually its own chairman and vice-chairman who shall act in the absence of the chairman.

##### **B. POWERS OF THE BOARD OF ZONING APPEALS**

Boards of zoning appeals shall have the following powers and duties:

1. To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this Article or of any ordinance adopted pursuant thereto.
2. To authorize, upon appeal in specific cases, such variance from the terms of the ordinance as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of the ordinance shall be observed and substantial justice done, as follows:
  - a. When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of the ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or of the use or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the use of the property; or where the board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the ordinance.
  - b. No such variance shall be authorized by the board unless it finds: (a) that the strict

application of the ordinance would produce undue hardship; (b) that such hardship is not shared generally by other properties in the same zoning district in the same vicinity; and (c) that the authorization of such variance will not be substantially detrimental to adjacent property and that the character of the district will not be changed by the granting of the variance.

c. No such variance shall be authorized except after notice and hearing as required by Section 15.1-431, Code of Virginia (1950), as amended.

d. No variance shall be authorized unless the board finds that the condition or situation of the property is not of so general or recurring a nature as to make reasonably practical the formulation of a general regulation to be adopted as an amendment to the ordinance.

e. In authorizing a variance, the board may impose such conditions regarding the location, character and other features of the proposed structure for use as it may deem necessary in the public interest, and may require a guarantee or bond to insure that the conditions imposed are being and will continue to be complied with.

3. To hear and decide appeals from the decision of the Zoning Administrator.

a. No such appeal shall be heard except after notice and hearing as provided by Section 15.1-431, Code of Virginia (1950), as amended.

4. To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by any such question and after public hearing with notice as required by Section 15.1-431, Code of Virginia (1950), as amended, the board may interpret the map in such a way as to carry out the intent and purpose of the ordinance for the particular section or district in question. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.

5. No provision of this Article shall be construed as granting any board the power to rezone property.

6. To hear and decide application for such special use permits as may be authorized in the ordinance.

a. The board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest and may require a guarantee or bond to insure that the conditions imposed are being and will continue to be complied with.

7. No such special use permit may be granted except after notice and hearing as provided by Section 15.1-431, Code of Virginia (1950), as amended.

8. To hear and decide applications for such special exceptions as may be authorized in the ordinance.

a. The board may impose such conditions relating to the use for which a special exception is granted as it may deem necessary in the public interest and may require a guarantee or bond to insure that the conditions imposed are being and will continue to be complied with.

9. No such special exception may be granted except after notice and hearing as provided by Section 15.1-431, Code of Virginia (1950), as amended.

## C. RULES AND REGULATIONS

1. The Board of Zoning Appeals shall adopt such rules and regulations as it may consider necessary.

2. The meeting of the board shall be held at the call of its chairman or at such time as a quorum of the board may determine.

3. The chairman or, in his absence, the acting chairman may administer oaths and compel

the attendance of witnesses.

4. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact. It shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

5. All meetings of the board shall be open to the public.

6. A quorum shall be at least three (3) members a majority of the membership.

7. A favorable vote of three (3) members of the board shall be necessary to reverse any order, requirement or determination of any administrative official or to decide in favor of the applicant on any matter upon which the board is required to pass.

#### D. APPEAL TO THE BOARD OF ZONING APPEALS

Any appeal to the board may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decision of the Zoning Administrator. Such an appeal shall be taken within thirty (30) days after the decision appealed from by filing with the Zoning Administrator, and with the board, a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the board that, by reason of facts stated in the certificate, a stay would in his opinion cause imminent peril to life and property, which case proceedings shall not be stayed otherwise than by a restraining order granted by the board or by a court of record, on application and on notice to the Zoning Administrator and for good cause shown.

#### E. APPEAL PROCEDURE

1. Appeals shall be mailed to the Board of Zoning Appeals in care of the Zoning Administrator, and a copy of the appeal mailed to the secretary of the planning commission. A third copy shall be mailed to the individual, official, department or agency concerned, if any.

2. Appeals requiring an advertised public hearing shall be accompanied by a certificate check for one hundred dollars (\$100), payable to the treasurer.

#### F. PUBLIC HEARING

The board shall fix a reasonable time for the hearing of an application or appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within sixty (60) days. In exercising its powers, the board may reverse or affirm, wholly or partly, or modify the order, requirements, decision, or determination of any administrative officer, or decide in favor of the applicant on any matter upon which it is required to pass under the ordinance, or effect any variance from the ordinance. The board shall keep minutes of its proceedings and other official actions which shall be filed in the office of the board and shall be public records. The chairman of the board or, in his absence, the acting chairman may administer oaths and compel the attendance of witnesses.



G. DECISION OF BOARD OF ZONING APPEALS

1. Any person or persons jointly or severally aggrieved by any decision of the Board of Zoning Appeals, or any taxpayer or any officer, department, board or bureau of the municipality, may present to the circuit court of the city a petition specifying the grounds on which aggrieved within thirty (30) days after the filing of the decision in the office of the board.
  2. Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the Board of Zoning Appeals and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten (10) days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from; but the court may, on application, on notice to the board, and on due cause shown, grant a restraining order.
  3. The Board of Zoning Appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.
  4. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.
  5. Costs shall not be allowed against the board unless it shall appear to the court that it acted in bad faith or with malice in making the decision appealed from.
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